EXHIBIT

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From: Steve Thurston <thurston.steve@gmail.com>
Date: Tue, Apr 21, 2009 at 9:47 PM
Subject: Additional testimony re: Record Hill Wind LLC - decommissioning plan
To: "Beth.Callahan@maine.gov" <Beth.Callahan@maine.gov>

Dear Beth,

I am submitting further testimony on the Record Hill Wind LLC application regarding the Decommissioning Plan. I am in possession of the DEP decision issued today on the Rollins Wind application. The findings and conclusion regarding the decommissioning plan establish a dangerous precedent that essentially makes the state a business partner with the applicant, relying on the profitable operation of the enterprise to ensure that an adequate decommissioning fund is created over time, but without any guarantees that the project will be profitable. The purpose of the decommissioning plan is to ensure, to the extent possible, that there will be funds available to remove the turbines in a "worse case scenario" where the project becomes insolvent, declares bankruptcy, or is in some way unable to undertake the complete decommissioning of the project.

Attached is a pdf file containing the Final Order and following I have exerpted the findings and conclusion on the Deerfield Wind project recently approved by the Vermont Public Service Board. The method by which Vermont protects the interests of the state is dramatically superior to the Rollins decision. The entire amount of the decommissioning fund is required to be fully funded by the time the project is completed. The fund is to be placed in a "bankruptcy remote instrument", and there is no allowance for speculative salvage value.

In as much as the residents of Roxbury Pond will bear the burden of the adverse visual impact of these enormous machines on the nearby ridges, it is only fair that they be adequately protected from the possibility that Record Hill Wind LLC, or its parent company Independence Wind LLC, companies that have no experience in industrial wind project ownership or operation, may face financial difficulties which would prevent decommissioning from being adequately funded.

The proposal to not begin funding the decommissioning plan until the 11th year of operation is particularly unacceptable when RHW LLC, in its offer of electricity payments to Roxbury, includes a provision that it be released from its obligation if the output of the turbines falls below 65% of the average 3 year output during any 3 month period. Given that RHW LLC feels the need to protect itself from obligations to the town, it follows that the state should be concerned about the ability of RHW to fully decommission the project if conditions occur that would prevent the fulfillment of its obligations to the town.

Therefore I respectfully request that RHW LLC, if a permit is issued, be required to fully fund a bankruptcy remote fund adequate to fully decommission the project without reducing the fund for any salvage value and that the fund shall be fully funded upon the commencement of operation, in a manner similar to the responsible decision issued in the Deerfield Wind matter.

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The following is exerpted from the Vermont Public Service Board final order on Deerfield Wind, docket number 7250:

VI. DECOMMISSIONING FUND

Findings

331. The establishment of a fund to decommission the Project is necessary in the event the Project does not succeed, or to ensure its timely and permanent removal at the end of its useful life. Ide pf.
at 9.

332. If properly maintained, the major equipment components of the Project (e.g., rotor blades, generators etc.) are designed to have useful lives of twenty to thirty years before a major overhaul or rebuild (re-powering) is considered. In the event that re-powering is not cost effective or permission to use the federal land on which the Project is constructed is withdrawn, the facility would be dismantled and removed, and the site would be restored to pre-construction conditions as much as is practical. Zimmerman pf. at 35-36.

333. Decommissioning would consist of the following:

(1) all turbines, including the blades, nacelles and towers, would be disassembled and transported off-site for reclamation and sale;

(2) all of the transformers would also be transported off-site for reuse or reclamation;

(3) the overhead power collection conductors and the power poles would be removed from the site;

(4) all underground infrastructure at depths less than two feet below grade would be removed from the site; and

(5) all underground infrastructure at depths greater than two feet below finished grade would be abandoned in place. Areas where subsurface components are removed would be filled, graded to match adjacent contours, and re-seeded, stabilized with an appropriate seed mix, and allowed to re-vegetate naturally. Zimmerman pf. at 35-36; exh. DFLD-HGC-2.

334. Excavating and removing the Project's underground collector line could be more intrusive than leaving the line buried. Tr. 12/2/08, vol. I at 25-26 Habig).

335. Salvage value for scrap is vulnerable to market price volatility and thus should not be considered a reliable funding source for decommissioning the Project. The amount placed in the Docket No.
7250 Page 92
decommissioning fund should represent the full estimated costs of decommissioning without netting out estimated salvage value. Lamont reb. pf. at 4; Ide pf. at 12.

336. Deerfield estimates the cost of decommissioning as $853,302.
Exh. DFLD-JZ-Rev12; Habig Panel reb. pf. at 24; tr. 12/1/08 at 148, 158-159 (Habig, Cherian).

337. Deerfield's proposed Decommissioning Plan is largely similar to the decommissioning plan approved by the Board as a post-CPG filing in the UPC Vermont Wind Project proceeding, Docket No. 7156. The plan calls for the establishment of a Decommissioning Fund, to be funded by a Letter of Credit or other appropriate financial security. The plan also calls for the fund to be increased over time to account for inflation. Deerfield has agreed not to consider scrap or resale value of project components in establishing the size of the fund. Habig Panel reb.

pf. at 24; tr. 12/1/08, vol. I at 159 (Cherian); exh. DFLD-HGC-2 at 2; Zimmerman pf. at 37.

338. Deerfield has agreed to post a Letter of Credit for the Decommissioning Fund prior to commencement of construction. The fund should be bankruptcy-remote to protect it against creditor claims in the event the Project encounters financial difficulty. Department Brief at 45; Ide pf. at 12.

339. If the Project fails to produce at least 65% of the output projected by Deerfield during any consecutive two-year period, then a decommissioning review should be instituted. Ide pf. at 13.

Discussion

The purpose of the Decommissioning Fund is to ensure that there are sufficient funds available to return the Project site to an appropriate condition at the end of the Project's useful life or earlier should the Project cease or reduce operations for any reason.

The need for a Decommissioning Fund is not disputed among the parties; however some parties dispute the validity and sufficiency of the fund as proposed by Deerfield. IWAG/SVR contend that the Decommissioning Plan lacks sufficient detail and that the dollar amount of the Decommissioning Fund has not been substantiated and is likely to be deficient in meeting the costs of dismantling the Project. IWAG/SVR recommend that the Board Docket No. 7250 Page 93

90. IWAG/SVR Brief at 8.
91. Department Brief at 46.
92. Department Reply Brief at 3; Finding No. 8.
93. Department Brief at 45.
94. Department Reply Brief at 4.
95. Amended Petition of UPC Vermont Wind, LLC, Docket 7156, Final Order of 8/8/2007 at 107-110.
96. Deerfield Brief at 30.
97. Id.

seek counsel from an outside independent expert to validate the plan and the estimated decommissioning costs.90 The Department recommends that the Decommissioning Fund "should not be controlled by or be an asset of Deerfield or any of its affiliates"91 and should be creditor and bankruptcy remote. The Department further states that if the Project's production falls below a level established by the Board, a decommissioning review should be initiated. The Department recommends that the production threshold should be set at 65% of the power output for the Project, projected by Deerfield to be 92,500 MWh annually.92 The Department also advocates that the amount of the Decommissioning Fund be based upon the full cost of decommissioning and not reduced by the estimated salvage value for any components of the Project.93 Finally, the Department recommends that Deerfield provide, prior to construction, a revised detailed estimate of the costs of decommissioning, covering all activities specified in the plan.94 Deerfield argues that the circumstances warranting future decommissioning and the establishment of its Decommissioning Fund are essentially the same as those considered by the Board for the UPC Vermont Wind Project.95 Deerfield contends that its Project does not present any unique issues with respect to decommissioning that would necessitate a different approach.96 Consequently, Deerfield asserts that its existing Decommissioning Plan, as represented by Exhibit DFLD-HGC-2, is consistent with the post-CPG plan approved by the Board in the UPC case, and thus the need for a post-CPG filing in this proceeding of an updated plan is unnecessary.97 In addition, Deerfield

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argues that no other party has offered an estimate of the cost of decommissioning the Project, nor is there any evidence that Deerfield's cost estimate is unreasonable or inaccurate.

98. Id.

99. Id. 30-31.

100. Department letter dated 2/20/09 at 1. 98

As a result, Deerfield proposes the following CPG Condition regarding decommissioning:

Deerfield Wind shall implement the Decommissioning Plan submitted as Exh. DFLD-HGC-2. The Decommissioning Plan may allow the fund to grow as the construction process proceeds such that the funding level is commensurate with the costs of removing infrastructure in place. The amount of the fund may not net out the projected salvage value of the infrastructure.

If actual power production falls below 65% of projected production during any consecutive two-year period, a decommissioning review is initiated; however, if Deerfield Wind can demonstrate that it has entered into stably priced power contracts with Vermont utilities through which a substantial amount of power is to be sold at stable prices, the Board may reduce the decommissioning trigger to as low as 50%.99 Subsequent discussions between Deerfield and the Department have resulted in both parties reaching agreement on Deerfield's proposed condition above, plus three additional CPG conditions governing decommissioning of the Project:100 Prior to commencement of construction, Deerfield Wind shall prepare a revised detailed estimate of the costs of decommissioning, covering all of the activities specified in the Decommissioning Plan. The plan shall certify that the cost estimate has been prepared by a person(s) with appropriate knowledge and experience in wind generation projects and cost estimating. The cost estimate shall be submitted to the Board for review and approval. Parties shall have two weeks to file any comments.
Deerfield shall submit to the Board, for review and approval, any permits, or executed lease agreements with involved private landowners. Any such lease agreements may be redacted to protect confidential business information. At a minimum, such lease agreements shall contain provisions which ensure that decommissioning can effectively occur in the event of Deerfield's insolvency or dissolution, the revocation of any permit issued to Deerfield, Deerfield's breach of any lease, or an order of the Board requiring decommissioning, and allow access to the impacted land for purposes of fulfilling any CPG condition, including access by representatives of the Department of Public Service, the Board, and the Agency of Natural Resources. Upon approval by the Board a notice of leasehold interest for each lease agreement shall be recorded in the land records of the relevant municipality. Deerfield may not begin significant construction activities prior to investigations, surveys, light construction, and other similar activities.

101. Department letter dated 2/20/09 at 1; Deerfield Reply Brief at Appendix A.

102. Docket 7156, Final Order of 8/8/2007 at 116

103. The 65% trigger for decommissioning review is also similar to that which we adopted in our consideration of the East Haven Windfarm. Docket No. 6911, Order of 7/17/06, at 85.

Deerfield shall submit to the Board the USFS special use permit and lease covering the federal lands on the site. Parties may file comments on whether the federal permit and lease contain terms that effectively meet the same objectives as detailed in the prior paragraph.101 We largely adopt the conditions agreed to by the Department and Deerfield as described above. We require Deerfield to file a Decommissioning Plan with the Board and parties prior to commencement of construction. The Plan shall include a revised estimate of the costs of decommissioning, covering all of the activities specified in the Decommissioning Plan, and shall contain certification that the cost estimate has been prepared by a person(s) with appropriate knowledge and experience in wind generation projects and cost estimating. Also, the Plan may allow the Decommissioning Fund to grow as the construction process proceeds such that the funding level is commensurate with the costs of removing infrastructure in place. The amount of the Fund may not net out the projected salvage value of the infrastructure. In addition, we require that the Decommissioning Plan include a copy of the Letter of Credit to be posted by Deerfield to secure the full amount of the Fund, and demonstrate how the Fund will be creditor and bankruptcy remote in the event of Deerfield's insolvency or business failure. We further require that the Letter of Credit be issued by an A-rated financial institution and that it name the Vermont Public Service Board as the designated beneficiary. The Letter of Credit shall be an "irrevocable standby" letter of credit and shall include an auto-extension provision (i.e. "evergreen clause").

Similar to the approach we approved in the UPC Vermont Wind Docket102 we adopt the Department's recommendation that a trigger be set for decommissioning review. Therefore, if actual production falls below 65% of projected production during any consecutive two-year period, a decommissioning review will be initiated.103 However, in the event that Deerfield can show that it has entered into stably-priced power contracts with Vermont utilities through which a substantial amount of power is to be sold to Vermont utilities at stable prices, we may reduce the decommissioning trigger to as low as 50% if we find that those contracts provide sufficient benefit to Vermont ratepayers. In any case, Deerfield would have the opportunity to demonstrate during this review that there are reasons for the decline in production such that the project should not be removed.